England in *In re a Solicitor Ex parte The Law Society*[3] :—

"The Law Society are very good judges of what is professional misconduct as a solicitor, just as the General Medical Council are very good judges of what is misconduct as a medical man."

For these reasons their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the costs of the appeal.

Appeal dismissed

Solicitors: *Hy. S. L. Polak & Co.; Charles Russell & Co.*

RAM KISHUN RAI v. REGINA

[A. Cr. J. (Buttrose Ag. J.) February 6, 1954]

[Singapore — Magistrate's Appeal No. 220 of 1953]

Road Traffic Ordinance, 1941, ss. 65 and 87 — Powers of Governor in Council to make rules — Road Traffic Rules, 1950, r. 36 — Bullock cart licensed under Municipal Ordinance (Cap. 133) — Prohibition of bullock carts "on a public road or street" within Municipal limits — Validity of rule — Sentence on contravention of rule.

The appellant in this case was charged with driving a bullock cart on a public road which was within the City limits, an offence under r. 36 of the Road Traffic Rules, 1950, and was convicted on that charge and fined $10.

The question of law which arose in this appeal was that portion of r. 36 of the Road Traffic Rules, 1950, which counsel for the appellant contended was *ultra vires* and void. The relevant portion of r. 36 is as follows: "No person shall lead, drive or ride a buffalo or bullock cart on a public road or street within the Municipal limits."

By s. 82(1) of the Municipal Ordinance a tax is imposed on all carts kept or habitually used within the Municipality at rates not exceeding those prescribed by the Governor in Council. The appellant had paid the prescribed tax for his bullock cart together with a registration fee.

Held: (1) s. 87(1) of the Road Traffic Ordinance can properly be used with s. 65 of that Ordinance to impose a valid rule, in this case r. 36 of the Road Traffic Rules, 1950; (2) the Governor in Council had power to prohibit the use of specified roads by vehicles of any specified class or description either generally or during particular hours; (3) roads are sufficiently "specified" by reference to "public roads or streets within the Municipal limits"; (4) in the circumstances of the case it would have been proper for the learned Magistrate, although finding that the charge had been proved, without proceeding to conviction to have dismissed the charge against the appellant after administering such caution as he thought fit.

Cases referred to:—

(1) *Ismail bin Haji Marican v. Rex* (1951) M.L.J. 69.

(2) *Rex v. Koh Hai Sui* (1951) M.L.J. 34.

(3) *Liversidge v. Anderson & Anor.* (1942) A.C. 206.

MAGISTRATE'S APPEAL.

L. Rayner for the appellant.

G. S. Hill (Crown Counsel) for the respondent.

Buttrose Ag. J. : — This was an appeal against conviction for driving a bullock cart on a public road within the Municipal limits and also against sentence. The facts were not in dispute but the question of law which arose was that the portion of rule 36 of the Road Traffic Rules, 1950, on which the charge against the appellant was based was *ultra vires* and void.

The relevant portion of rule 36 is as follows :—

"No person shall lead, drive or ride a buffalo or bullock cart on a public road or street within the Municipal limits".

The imposition of a penalty for driving a bullock cart on a public road within the Municipal limits was also effected by rules made under the Road Traffic Ordinance, 1941.

There is, in my opinion, no express power given to the Governor in Council to make rules on this particular point. The prosecution must rely on the general powers given by section 87(1) of the Road Traffic Ordinance.

This section provides that the Governor in Council may make rules ... for any purpose for which rules may be made under this Ordinance and for prescribing anything which may be prescribed under this Ordinance and generally for the purposes of carrying this Ordinance into effect. This was interpreted by Murray-Aynsley C.J. in *Ismail bin Haji Marican v. Rex*[1] to mean that where anyone is given power to prescribe anything the Governor in Council may make rules to that effect. He went on to say that he considered that the power to prohibit given under section 24(2) was a power to prescribe.

Similarly, in the view I take, the power to prohibit given under section 65 is a power to prescribe. Mr. Rayner in his persuasive argument drew a distinction between section 24(2) and section 65. In the former he contended that there were no conditions whatever attached to the exercise of the Chief Police Officer's discretion while in the latter very serious limitations were imposed on its exercise. In rule 36, he submitted, there was nothing to show that such an exercise of discretion or opinion had taken place.

It was argued that the Governor in Council had no power to usurp the Chief Police Officer's discretion — it was a very personal discretion vested in him — and that section 65 was by its very nature entirely unsuitable and inappropriate for coupling with section 87(1). Mr. Rayner however conceded that the object sought to be achieved, in his submission improperly,

by rule 36 could have been successfully effected by the Chief Police Officer exercising his powers under section 65.

I have carefully examined the wording of sub-sections (1) and (2) of section 65 in the light of this argument and I have arrived at the conclusion that section 87(1) can properly be used with section 65 to impose a valid rule, in this case rule 36.

I consider that the Governor in Council had power to prohibit the use of specified roads by vehicles of any specified class or description either generally or during particular hours.

It was further argued by Counsel for the appellant that the relevant portion of the rule in question was invalid because it conflicted with the so-called "blanket rule" referred to in *Rex v. Koh Hai Sui*[2]. With this argument I am unable to agree.

In the case referred to, the relevant order (the Prohibition of Imports Order, 1948), purported to prohibit all imports save under licence. In the present case the rule purports to prohibit the use of specified roads (namely public roads or streets within the Municipal limits) by vehicles of a specified class (namely, bullock carts). It will be sufficient if I say that, in the view I take, the principles enunciated in *Rex v. Koh Hai Sui*[2], *supra* and *Liversidge's case*[3] have no application to the present case.

Finally it was contended that the word "specified" used in section 65 meant that the roads must be named. In my opinion roads are sufficently "specified" by reference to "public roads or streets within the Municipal limits".

I turn now to the question of sentence. The appellant was fined the sum of $10 and it was contended that this, in all the circumstances, was excessive.

By section 82(1) of the Municipal Ordinance a tax is imposed on all carts ... kept or habitually used within the Municipality at rates not exceeding those prescribed by the Governor in Council. For every cart drawn by any description of horse or cattle a fee of $38 has been prescribed, (vide G. N. No. S. 503/48).

The appellant had paid this tax of $38 for the year ending 31st December, 1953, together with a registration fee of $3 and a notice fee of $4.50 making a total of $45.50.

The anomalous position thus arises of the appellant residing in the Municipal area, housing and habitually using a bullock cart within that area, paying a licence fee and receiving a licence from the City Council and yet being entirely prohibited from using his bullock cart within the Municpal limits. This is a matter which should receive the attention of the appropriate authorities.

Although there was evidence that "registered owners are told verbally that they cannot use the cart within the Municipal limits", Crown Counsel agreed that very considerable confusion must exist as to the position and in the circumstances did not seek to support the sentence.

I consider it would have been proper for the Magistrate, although finding, in my opinion rightly so, that the charge had been proved, without proceeding to conviction to have dismissed the charge against the appellant after administering such caution as he thought fit.

I propose to adopt this course.

The conviction and sentence will therefore be quashed and the charge dismissed and the appellant is warned of the consequences of any further infringement of the law.

Conviction and sentenced quashed.

Solicitors for the appellant: *L. Rayner & Co.*

TAN AH PEE v. YEO ENG SOON & ORS.

[A. C. J. (Murray-Aynsley C.J.) October 11, 1954]

[Singapore — District Court Appeal No. 12 of 1954]

Master and Servant — Labour Ordinance (Cap. 69), s. 19A — Paid holidays falling "within the period of his employment" — Casually employed labourers — Not entitled to paid holiday.

The respondents in this case were labourers casually employed as and when required. They claimed double wages for certain holidays on which they worked on the ground that they were entitled to a holiday with pay under s. 19A(1) of the Labour Ordinance. The relevant part of this sub-section reads: "Every labourer shall be entitled to a paid holiday at his ordinary rate of wages on such of the days specified in Schedule D to this Ordinance as fall within the period of his employment . . ." S. 19A(2) provides that where a labourer is required by his employer to work on any holiday to which he would otherwise be entitled he shall be entitled to double the ordinary rate of wages.

The labourers in this case were paid collectively when they did a job and were free to work or not when any job was offered. The appellant contended that the respondents were not engaged for a period of time and that s. 19A did not therefore apply to them. The Asst. Commissioner for Labour held that they were entitled to pay under that section.

Held: persons such as the respondents casually employed for particular jobs are not entitled to holidays with pay.

DISTRICT COURT APPEAL.

L. A. J. Smith for the appellant.

A. V. Winslow (Crown Counsel) *amicus curiae* for the respondents.